

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

REYNALDO AGAVO,

Case No.: 2:13-cv-01741-JCM-DJA

Petitioner

## Order

V.

CALVIN JOHNSON,

## Respondents

8 Before the Court in this habeas matter is Respondents' unopposed Motion for Relief from  
9 Judgment (ECF No. 100) under Fed. R. Civ. P. 60(b).

## Background

11 In October 2021, the Court conditionally granted the petition for writ of habeas corpus as  
12 to ground one, vacated the state court judgment of conviction, and ordered Petitioner's release  
13 unless the state elected to retry Petitioner and commence jury selection within 120 days  
14 following the election to retry Petitioner. ECF No. 88 at 41-42. Following appellate proceedings,  
15 on October 26, 2023, the state filed a notice of intent to retry Petitioner. ECF No. 95. As such,  
16 the deadline to commence jury selection was February 23, 2024. In April 2024, the Court granted  
17 Respondents' request to amend the judgment to allow jury selection in the retrial to commence  
18 no later than June 24, 2024. ECF No. 96 at 3.

19 Respondents now request an extension of time to comply with the commencement of jury  
20 selection up to and including May 22, 2025. ECF No. 100. They assert that the state district court  
21 set a trial date on May 12, 2025, and the state district court granted Petitioner's release on his  
22 own recognizance, subject to monitoring, pending his retrial.

## 1 Discussion

2 When a court issues a writ of habeas corpus, it declares in essence that the petitioner is  
3 being held in custody in violation of his constitutional rights. *See* 28 U.S.C. § 2254(a); *Preiser v.*  
4 *Rodriguez*, 411 U.S. 475, 484 (1973). Courts employ a conditional order of release in appropriate  
5 circumstances, which orders the State to release the petitioner unless the State takes some  
6 remedial action, such as to retry the petitioner. *See, e.g., Wilkinson v. Dotson*, 544 U.S. 74, 89  
7 (2005) (describing the “common practice of granting a conditional writ,” that is, “ordering that a  
8 State release the prisoner or else correct the constitutional error through a new  
9 hearing”); *Herrera v. Collins*, 506 U.S. 390, 403 (1993) (“The typical relief granted in federal  
10 habeas corpus is a conditional order of release unless the State elects to retry the successful  
11 habeas petitioner, or in a capital case a similar conditional order vacating the death sentence.”)  
12 “[C]onditional orders are essentially accommodations accorded to the state, in that conditional  
13 writs enable habeas courts to give states time to replace an invalid judgment with a valid one.”  
14 *Wilkinson*, 544 U.S. at 87. *See also Harvest v. Castro*, 531 F.3d 737, 742 (9th Cir. 2008).

15 The Ninth Circuit has held that a district court can modify its conditional writ even after  
16 the time provided in the conditional writ has lapsed. *Harvest*, 531 F.3d at 744. “Logically, the  
17 equitable power of the district court in deciding a habeas petition includes the ability to grant the  
18 state additional time beyond the period prescribed in a conditional writ to cure a constitutional  
19 deficiency.” *Id.* (citing *Gilmore v. Bertrand*, 301 F.3d 581, 582-83 (7th Cir. 2002)). Such  
20 modifications are governed by the Habeas Rules and, by incorporation, the Rules of Civil  
21 Procedure, including Rule 60. *Harvest*, 531 F.3d at 745.

22 Under Rule 60, the court may relieve a party from a final judgment or order for the  
23 following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly

1 discovered evidence; (3) fraud, misrepresentation, or misconduct by an opposing party; (4) the  
2 judgment is void; (5) the judgment has been satisfied; or (6) any other reason justifying relief  
3 from the judgment. Fed. R. Civ. P. 60(b); *Stewart v. Dupnik*, 243 F.3d 549, 549 (9th Cir. 2000).

4 The Court considers the four-factor test the Supreme Court established in *Pioneer*: (1) the  
5 danger of prejudice to the nonmoving party; (2) the length of delay; (3) the reason for the delay,  
6 including whether it was within reasonable control of the movant; and (4) whether the moving  
7 party's conduct was in good faith. *Pioneer Invs. Servs. Co. v. Brunswick Assocs. Ltd.*, 507 U.S.  
8 380, 392 (1993). In consideration of the *Pioneer* factors and because Petitioner does not oppose  
9 the motion, the Court will grant Respondents' motion.

10 IT IS THEREFORE ORDERED that Respondents' Motion for Relief from Judgment  
11 (ECF No. 100) is granted.

12 It is further ordered that Judgment (ECF No. 88) is modified to extend the deadline for  
13 the State to commence jury selection in the retrial to May 22, 2025.

14 DATED October 9, 2024.

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16 JAMES C. MAHAN  
17 UNITED STATES DISTRICT JUDGE  
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